

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Greg E. McRae  
Serial No.: 10/807,217  
Filing Date: March 22, 2004  
Group Art Unit: 3727  
Confirmation No.: 3298  
Examiner: Stephen J. Castellano  
Title: UNDERGROUND TANK SHROUD ASSEMBLY

**Mail Stop AF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

The following Pre-Appeal Brief Request for Review (“Request”) is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005 (“OG Notice”). Pursuant to the OG Notice, this Request is being filed concurrently with a Notice of Appeal. Applicants respectfully request reconsideration of the application in light of the remarks set forth below.

**REMARKS**

Applicant received a Final Office Action dated January 29, 2008 (“Office Action”) to which Applicant responded with a response dated March 31, 2008 (“Previous Response”), after which, Applicant received an Advisory Action dated April 21, 2008 (“Advisory Action”). At the time of the Advisory Action, Claims 1-12, 15-16, and 19-44 were pending, of which, Claims 37-44 were withdrawn and Claims 1-12, 15-16, and 19-36 were rejected. Applicant seeks review of the rejections of Claims 4, 8, 16, 19, 27, and 31. Applicant does not seek review in this Request of the rejections of Claims 1-3, 5-7, 9-12, 15-16, 20-26, 28-30, and 32-36.

**Claim Rejections - 35 U.S.C. § 103**

The Office Action rejects Claims 8, 19, and 31 under 35 U.S.C. §103(a) as being unpatentable over *Kewitz* in view of *Fuchs* and *Anderson*. Applicant respectfully traverses these rejections for the reasons stated below.

Claim 8 discloses an underground tank shroud assembly, wherein the shroud comprises a generally conical shape. Claims 19 and 31 disclose similar limitations. The Office Action states that “*Fuchs* teaches a conical shaped shroud,” but fails to specifically point out where this limitation is disclosed in the reference. *Office Action*, pg. 3. Applicant respectfully disagrees. *Fuchs* discloses a cover arrangement for a channel arrangement or similar structure that can be installed in the ground and opened. *Fuchs*, ¶ 0037. However, no other details are provided regarding this structure or, more specifically, its shape. Therefore, Applicant respectfully contends that *Fuchs* fails to disclose, teach, or suggest a shroud comprising a generally conical shape. Neither *Kewitz* nor *Anderson* cure this deficiency. Accordingly, Applicant respectfully contends that Claims 8, 19, and 31 are patentably distinguishable from the references cited by the Examiner.

The Office Action rejects Claims 4, 16, and 27 under 35 U.S.C. §103(a) as being unpatentable over *Kewitz* in view of *Fuchs* and *Anderson*. Applicant respectfully traverses these rejections for the reasons stated below.

Claim 4 discloses an underground tank shroud assembly comprising a shroud lid configured to cover the top region of the shroud, wherein the shroud lid is coupled to the

shroud at both a first hinge coupling and a second hinge coupling when the shroud lid is in a closed position. Claim 4 further discloses that each hinge coupling comprises a nut and bolt assembly to couple the shroud lid to the shroud. Claims 16 and 27 disclose similar limitations.

The Office Action contends that “Kewitz discloses the invention except for the shroud lid having two hinge couplings.” *Office Action*, pg. 2. The Examiner relies on *Fuchs* as disclosing these two hinge couplings. *Office Action*, pg. 2. The Examiner further relies on *Anderson* as disclosing a hinge with a nut and bolt connection. *Office Action*, pg. 3. The Examiner proposes to add this nut and bolt connection to two Kewitz-style rotation/fixation devices in order to “add a more secure lid assembly that can’t be removed or lifted as quickly or without the use of hand tools to remove the nuts.” *See Advisory Action*, pg. 1; *Office Action*, pg. 3. Applicant respectfully maintains that these combinations are improper for the reasons stated below.

Firstly, when proposing a combination of references for an obviousness rejection, a reference “must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. M.P.E.P. § 2141.02 (VI). Whenever “the teachings of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art.” M.P.E.P. § 2143.01 (II). *Fuchs* repeatedly discusses disadvantages associated with hinge couplings. *See, e.g.*, *Fuchs*, ¶ 0007. Therefore, the Examiner proposes to extract the concept of two couplings, but not the actual fixation/rotation devices of *Fuchs* itself. *Office Action*, pg. 4. Applicant respectfully maintains that this is improper. Because *Fuchs* teaches away from the use of hinges, there is no indication that *Fuchs* would suggest, to a person of ordinary skill in the art, to modify the hinges of *Kewitz* in any way.

Furthermore, Applicant respectfully contends that the Examiner’s attempt to extract a nut and bolt connection from *Anderson* is improper. Figure 1 of *Kewitz* appears to show element 13 that secures element 12 to element 11 when element 12 is in a closed position. Therefore, there is no indication that the invention of *Kewitz* needs to be modified to provide a “more secure lid assembly,” as suggested by the Examiner.

*Anderson* discloses a vent-on-demand hatch cover for a hatch opening of a railcar. *Anderson*, col. 1, lines 5-10. The hatch cover is attached to the opening using hinge brackets on one side and toggle locking brackets on the other side. *Anderson*, col. 2, lines 55-57. The

first hinge brackets provide a hinge for which the cover is hingedly connected to the. *Anderson*, col. 2, lines 57-58. The Examiner relies on this connection as disclosing a nut and bolt connection. The opposing toggle locking brackets provide a mounting for a toggle locking device “which serves to selectively lock the cover in closed and sealed position or allow the cover to be swung back in open position for loading.” *Anderson*, col. 2, lines 58-63.

Therefore, *Anderson* discloses a hatch cover having two opposing sets of brackets. When the toggle locking device is in a locked position, the hatch cover is closed and sealed. When the toggle locking device is in an unlocked position, the hatch cover is still connected at the first hinge bracket, but is allowed to swing into an open position for loading. The Examiner has not shown why these two brackets, used in conjunction, do not provide a suitably “secure lid assembly.” Furthermore, the Examiner has not shown any motivation for one having ordinary skill in the art to choose to take the nut and bolt connection of one of these two connections, and apply it to two opposing rotation/fixation devices in *Kewitz*. For at least these reasons, Applicant respectfully contends that the proposed *Kewitz-Fuchs-Anderson* combination is improper and cannot support an obviousness rejection.

**Conclusion**

As the rejections of Claims 4, 8, 16, 19, 27, and 31 contain clear legal and factual deficiencies, Applicants respectfully request a finding of allowance of Claims 4, 8, 16, 19, 27, and 31. If the PTO determines that an interview is appropriate, Applicants would appreciate the opportunity to participate in such an interview. To the extent necessary, the Commissioner is hereby authorized to charge any required fees or credit any overpayments to Deposit Account No. **02-0384** of **Baker Botts L.L.P.**

Respectfully submitted,

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